

Group II: Claims 1-7 and 19-20, in part, drawn to products (i.e., a system or catalyst), wherein the complexes Ni(0) (i.e., zero-valent nickel complex) is not encompassed in Group I. If this group is elected, applicants are requested to elect a single species for the search purpose.

Group III: Claims 8-12, drawn to process of making (i.e., hydrocyanation of olefinically unsaturated compounds) in the presence of a catalyst of Group I. If this group is elected, applicants are requested to elect a single species for the search purpose.

Group IV: Claims 13-18, in part, drawn to products (i.e., a system or catalyst), wherein the complexes Ni(0) (i.e., zero-valent nickel complex) represents compounds of formula (I) thereof. If this group is elected, applicants are requested to elect a single species for the search purpose.

Group V: Claims 13-18, in part, drawn to products (i.e., a system or catalyst), wherein the complexes Ni(0) (i.e., zero-valent nickel complex) is not encompassed in Group IV. If this group is elected, applicants are requested to elect a single species for the search purpose.

In addition, the Office has indicated that the claims are directed to more than one species of the generic invention and that the species lack unity of invention and the Examiner is also requiring election of an ultimate, single disclosed species.

The Examiner, citing PCT Rules 13.1 and 13.2, contends that Groups I-V do not relate to single general inventive concept because they lack the same or corresponding special technical features. Specifically the Examiner argues that “the claims lack a significant structure element qualifying as the special technical feature that defines a contribution over the prior art, see Jun et al. CAS: 136:342540.”

However this is a conclusory argument since the argument asserts with insufficient actual supporting data or reasons that the claims do not avoid the prior art and that a lack of unity of invention exists. As the Office has provided insufficient reasons in support of the belief, the Office has not met the burden placed upon it, and accordingly, the restriction is believed to be improper and should be withdrawn.

Additionally, Applicants further traverse the Restriction Requirement on the ground that the Office has not applied the same standard of unity of invention as the International Preliminary Examination Authority. The Authority did not take the position that unity of invention was lacking in the international application and examined all claims together. Applicants note that PCT Article 27(1) states that no national law shall require compliance with requirement relating to the form and contents of the international application different from or additional to those which are provided for the Patent Cooperation Treaty and the Regulations. In light of PCT Article 27(1) and 37 C.F.R. §145 and §1.499, it is apparent that when the International Preliminary Examination Authority finds no objection based on lack of unity of invention, there is a special burden on the Office to explain why its conclusions are diametrically opposed to those of the International Preliminary Authority, as approved by treaty.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species. In addition, Applicants request rejoinder of the process claims should the product claims be found allowable.

For the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction and Election of Species Requirement. Therefore, withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

Applicants submit this application is now in condition for examination on the merits and early notification of such action is earnestly solicited.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12810-00135-US1 from which the undersigned is authorized to draw.

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Respectfully submitted,
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